

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC., SECURITIES,  
DERIVATIVE & "ERISA" LITIGATION

MDL No. 1658 (SRC)

THIS DOCUMENT RELATES TO:  
THE CONSOLIDATED ERISA ACTION

Case No. 2:05-CV-01151-SRC-MAS  
Case No. 2:05-CV-02369-SRC-MAS

**STIPULATION AND ORDER REGARDING CERTAIN WITNESSES  
WHOSE PRIOR DEPOSITION TESTIMONY IS BEING USED IN THIS ACTION**

WHEREAS, on March 15, 2010, the Court entered a Stipulation and Order Regarding Use of Prior Deposition Testimony (the "March 15, 2010 Stipulation"), which identifies forty witnesses whose deposition testimony in prior Vioxx-related litigation shall be treated "as if it had been taken in this action";

WHEREAS, pursuant to the March 15, 2010 Stipulation, Plaintiffs and Defendants (collectively, the "Parties") have met and conferred concerning the further questioning of eight witnesses whose prior deposition testimony is covered by the March 15, 2010 Stipulation; and

WHEREAS, in an effort to streamline discovery and avoid additional litigation over the scope of further questioning of witnesses who previously were deposed, the Parties have agreed to the following;

IT IS HEREBY STIPULATED AND AGREED by and between the Parties, through their undersigned counsel, AND SO ORDERED, as follows:

1. Plaintiffs agree not to seek further questioning of the following witnesses as long as Defendants do not offer affirmative testimony from such witnesses outside of the prior deposition testimony that is the subject of the March 15, 2010 Stipulation ("Additional Testimony"):

Eliav Barr  
Wendy Dixon  
Briggs Morrison  
Thomas Musliner  
Alan Nies  
Alise Reicin  
Deborah Shapiro  
Douglas Watson

2. In the event Defendants decide to introduce Additional Testimony from any of the witnesses listed in paragraph 1 (whether live, by declaration, by affidavit or otherwise), Defendants shall give Plaintiffs reasonable notice of such intention, and Plaintiffs shall be permitted to seek to depose any such witness solely with respect to the subject matter of the Additional Testimony.

3. The Parties do not request that any deadlines be extended as a result of this agreement.

DATED: May 17, 2010

AGREED TO BY:

**IZARD NOBEL LLP**

By: 

Robert A. IZARD  
William Bernarduci  
29 South Main Street, Suite 215  
West Hartford, CT 06107  
(860) 493-6292

*Chair of Lead Counsel Committee for  
Plaintiffs in the Consolidated ERISA Action*

**TRUJILLO RODRIGUEZ & RICHARDS,  
LLC**

Lisa J. Rodriguez, Esq.  
258 Kings Highway East  
Haddonfield, NJ 08033  
(856) 795-9002

*Liaison Counsel for Plaintiffs in the  
Consolidated ERISA Action*

By: s/ Lisa J. Rodriguez  
\_\_\_\_\_

DATED: May 17, 2010

**CRAVATH, SWAINE & MOORE LLP**

By: 

Robert H. Baron  
Karin A. DeMasi  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019-7475  
(212) 474-1000

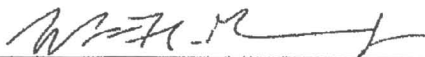
**HUGHES HUBBARD & REED LLP**

William R. Stein  
Eric S. Parnes  
1775 I Street, N.W.  
Washington, DC 20006-2401  
(202) 721-4600

*Counsel for Defendants Merck & Co., Inc., H  
Brewster Atwater, Jr., Marcia J. Avedon,  
Derek Birkin, Lawrence A. Bossidy, William  
G. Bowen, Erskine B. Bowles, Johnnetta B.  
Cole, William M. Daley, Caroline Dorsa,  
Lloyd C. Elam, Charles E. Exley, Jr., Carleton  
S. Florina, Niall FitzGerald, Kenneth C.  
Frazier, Raymond V. Gilmartin, William B.  
Harrison, Jr., William N. Kelley, Judy C.  
Lewent, Heidi G. Miller, Bradley T. Sheares,  
Thomas E. Shenk, Anne M. Tatlock, Samuel O.  
Thier, Dennis Weatherstone, Wendell P.  
Weeks and Peter C. Wendell*

DATED: May 17, 2010

SCHULTE ROTH & ZABEL LLP

By: 

William H. Gussman, Jr.  
919 Third Avenue  
New York, NY 10022  
(212) 756-2000

LOWENSTEIN SANDLER P.C.  
Lawrence M. Rolnick, Esq.  
65 Livingston Avenue  
Roseland, NJ 07068

*Counsel for Defendant Edward M. Scolnick*

SO ORDERED:

May 17, 2010



Hon. Michael A. Shipp  
United States Magistrate Judge